



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TRG
Docket No: 3384-99
6 December 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by Headquarters Marine Corps, dated 29 October 1999, a copy of which is enclosed and your rebuttal to the advisory opinion.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

In reaching its decision, the Board believed that you knew or should have known that it was not the intent of the Marine Corps to issue you a reserve commission or to allow you to earn qualifying years for reserve retirement. In addition, the Board concluded that the letter from Headquarters Marine Corps, dated 20 August 1998, does not constitute the formal notification of eligibility for retired pay at age 60 as is required by law. It appears that the drafter of the letter was unaware that you were not eligible for retired pay at age 60 because the last six qualifying years were not in the reserve component. Had you requested retirement your eligibility would have been reviewed upon receipt of such a request, and you would not have been issued a formal notification of eligibility. In view of the foregoing, the Board substantially concurred with the comments contained in the advisory opinion.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that

favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1760
MMSR-6J
29 Oct 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]
[REDACTED], FORMER MARINE CORPS RESERVIST

Ref: (a) MMER Routing Sheet of 8Oct99; Docket No. 3384-99
(b) Title 10, U.S. Code, Section 12731a

1. The reference requests an advisory opinion on [REDACTED] request to have his records corrected to show that he was retired and not discharged from the Marine Corps Reserve.
2. When [REDACTED] resigned his active duty commission he should not have been allowed a reserve commission. However, due to an administrative oversight, he was not discharged at that time and subsequently earned qualifying years in the Marine Corps Reserve. Since the oversight was not the fault of [REDACTED] he should be allowed to retain the points earned while a member of the Marine Corps Reserve.
3. [REDACTED] has earned 21 years of qualifying service, however, he is not eligible for retirement from the Marine Corps Reserve because he did not perform the last six qualifying years in a reserve component as required by reference (b).
4. We must regretfully recommend that [REDACTED] petition not be granted favorable consideration.
5. Point of contact is Mr. [REDACTED] MMSR-5, 784-9306.

[REDACTED]
[REDACTED], JR.
Head, Separation and
Retirement Branch
By direction of the Commandant
of the Marine Corps